

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

GREGORY A. WALKER,

No. C 10-02234 CW (PR)

Petitioner,

ORDER GRANTING MOTION TO  
DISMISS; DENYING CERTIFICATE OF  
APPEALABILITY

v.

RANDY GROUNDS, Warden,

Respondent.

Petitioner, a state prisoner, has filed this pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging as a violation of his constitutional rights the denial of parole by the California Board of Parole Hearings (Board) on July 8, 2008.

In an Order dated June 24, 2010, the Court ordered Respondent to show cause why the petition should not be granted.

On August 30, 2010, Respondent filed a motion to dismiss the petition. Petitioner filed an opposition to the motion and Respondent filed a reply.

For the reasons discussed below, Respondent's motion will be granted.

A. Petitioner's Claim

A federal district court may entertain a petition for a writ of habeas corpus "in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a).

1 In his petition, Petitioner states he was denied parole on  
2 July 8, 2008, and that the reasons for the denial were "the nature  
3 of the commitment offense; the psychological report; institutional  
4 behavior, and that parole plans were unrealistic." (Pet. at  
5 Attached Page Claim One.) He then argues that he is entitled to  
6 federal habeas corpus relief on the following grounds:

7  
8 Under the State and Federal Constitutions, Petitioner has  
9 a right to due process of law in parole matters. Here,  
10 the Board failed to explicitly state the nexus between  
11 the cited factor or factors and the ultimate decision of  
12 current dangerousness. The Board fails to meet its  
13 affirmative obligation and due process rights/duties  
14 applicable to the conduct of the hearing. As a matter of  
15 California Law, the Board must articulate a rational  
16 nexus between its factual findings and conclusions.  
17 Thereby, the nexus test must be affirmatively applied and  
18 articulated by the Board in the first instance.

19 Id.

20 Respondent moves to dismiss the petition on three alternative  
21 grounds: the petition does not meet the pleading requirements of  
22 Rules 2 and 4 of the Rules Governing Section 2254 Cases because  
23 Petitioner fails to specify the grounds for relief and to plead his  
24 claims with particularity; the petition fails to state a federal  
25 claim for habeas relief; and the petition is unexhausted because  
26 Petitioner did not present his federal constitutional claim to the  
27 California Supreme Court.

28 In his opposition, Petitioner responds that the petition  
should proceed because he has alleged the same operative facts as  
in his state petition, the facts show there was not "some evidence"  
to support the denial of parole, and Ninth Circuit law requires  
that habeas relief be granted under such circumstances.

1 Federal habeas corpus relief is unavailable for an error of  
2 state law. Swarthout v. Cooke, 131 S. Ct. 859, 861 (per curiam)  
3 (2011). Under certain circumstances, however, state law may create  
4 a liberty or property interest that is entitled to the protections  
5 of federal due process. In particular, while there is "no  
6 constitutional or inherent right of a convicted person to be  
7 conditionally released before the expiration of a valid sentence,"  
8 Greenholtz v. Inmates of Nebraska Penal & Corr. Complex, 442 U.S.  
9 1, 7 (1979), a state's statutory parole scheme, if it uses  
10 mandatory language, may create a presumption that parole release  
11 will be granted when, or unless, certain designated findings are  
12 made, and thereby give rise to a constitutionally protected liberty  
13 interest. See id. at 11-12. The Ninth Circuit has determined  
14 California law creates such a liberty interest in release on  
15 parole. Cooke, 131 S. Ct. at 861-62.

16 When a state creates a liberty interest, the Due Process  
17 Clause requires fair procedures for its vindication, and federal  
18 courts will review the application of those constitutionally  
19 required procedures. Id. at 862. In the context of parole, the  
20 procedures necessary to vindicate such an interest are minimal: a  
21 prisoner receives adequate process when "he [is] allowed an  
22 opportunity to be heard and [is] provided a statement of the  
23 reasons why parole was denied." Id. The Supreme Court has held  
24 that the Constitution does not require more. Id.; see Pearson v.  
25 Muntz, 639 F.3d 1185, 1191 (9th Cir. 2011) ("Cooke was unequivocal  
26 in holding that if an inmate seeking parole receives an opportunity  
27 to be heard, a notification of the reasons as to denial of parole,  
28 and access to their records in advance, that should be the

1 beginning and end of the inquiry into whether the inmate received  
2 due process.") (alterations, internal quotation and citation  
3 omitted).

4 In the instant action, Petitioner has never maintained that he  
5 was denied an opportunity to speak at his hearing and contest the  
6 evidence against him, that he was denied access to his record in  
7 advance, or that he was not notified of the reasons why parole was  
8 denied. Rather, the only argument raised by Petitioner in the  
9 petition, and expanded upon by Petitioner in his opposition to the  
10 motion to dismiss, is that the Board's decision was not supported  
11 by "some evidence." As Cooke clearly forecloses such a claim,  
12 Petitioner has failed to present a constitutionally cognizable claim  
13 for the denial of due process. Consequently, the motion to dismiss  
14 the petition for failure to state a claim for federal habeas relief  
15 is GRANTED. See Pearson, 639 F.3d at 1191 (reversing district  
16 court's pre-Cooke grant of habeas relief on petitioner's "some  
17 evidence" claim; finding no further due process inquiry required  
18 because petitioner had never argued he was not provided the  
19 procedures set forth in Cooke).

20 B. Certificate of Appealability

21 A certificate of appealability is denied with respect to  
22 Petitioner's claim. See 28 U.S.C. § 2253(c)(1)(a); Rules Governing  
23 Habeas Corpus Cases Under § 2254, Rule 11 (requiring district court  
24 to issue or deny certificate of appealability when entering final  
25 order adverse to petitioner). Specifically, Petitioner has failed  
26 to make a substantial showing of the denial of a constitutional  
27 right, as he has not demonstrated that reasonable jurists would  
28

1 find the Court's assessment of the constitutional claims debatable  
2 or wrong. Slack v. McDaniel, 529 U.S. 473, 484 (2000).

3 CONCLUSION

4 For the foregoing reasons, the Court orders as follows:

5 1. Respondent's motion to dismiss the petition for failure  
6 to state a claim for federal habeas relief is GRANTED.

7 2. A certificate of appealability is DENIED.

8 The Clerk of the Court shall enter judgment in favor of  
9 Respondent, terminate all pending motions, and close the file.

10 This Order terminates Docket no. 5.

11 IT IS SO ORDERED.

12 Dated: 8/12/2011



13 CLAUDIA WILKEN  
14 UNITED STATES DISTRICT JUDGE  
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UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

GREGORY A. WALKER,

Plaintiff,

v.

RANDY GROUNDS et al,

Defendant.

Case Number: CV10-02234 CW

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on August 12, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Gregory A. Walker D-12881  
2-330L  
Correctional Training Facility  
P.O. Box 689  
Soledad, CA 93960

Dated: August 12, 2011

Richard W. Wiekling, Clerk  
By: Nikki Riley, Deputy Clerk